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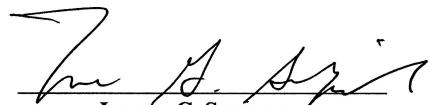
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April 19, 2022

BY ECF

Hon. Lorna G. Schofield
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Dated: April 20, 2022
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

Re: *S.B., individually and on behalf of her child A.W. v. New York City Department of Education 21-vc-9139*

Your Honor:

I am an Assistant Corporation Counsel in the Office of the Corporation Counsel of the City of New York, attorney for the Defendant New York City Department of Education (DOE) in the above-captioned action. I write jointly with Plaintiff's counsel and pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure, to respectfully request leave to file under seal the annexed certified copy of the administrative record underlying this action, which is brought pursuant to the Individuals with Disabilities Education Act (IDEA).

The administrative record in this action is replete with confidential information, including the name, date of birth, and other pedigree information of the minor student, A.W., on whose behalf Plaintiffs bring this action challenging, in part, the underlying final administrative decision. The record also contains "personally identifiable information" describing A.W.'s medical history and disabilities, in addition to A.W.'s educational records and information detailing the student's educational progress and history. These materials are confidential under the IDEA and the Family Educational Rights and Privacy Act (FERPA). 34 C.F.R. § 99.3 (defining personally identifiable information under FERPA), § 300.32 (including a "list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty" as personally identifiable information under IDEA). Thus, this information should not be made public in compliance with Fed. R. Civ. P. 5.2(d).

Additionally, as the underlying administrative proceeding is presumptively closed to the public pursuant to 34 C.F.R. § 300.512(c)(2), all documents recounting the proceeding should themselves be deemed confidential. *Id.* (permitting parents to choose whether a hearing is open or closed to the public). "For these reasons, courts in this Circuit have routinely allowed administrative records underlying IDEA cases to be filed under seal to protect the privacy interests of minor child plaintiffs." *L.B. v. New York City Dept of Ed*, 15-cv-3176, 2015 U.S. Dist. LEXIS 127081, *2 (S.D.N.Y. Sept. 22, 2015)(citing *C.L. v. Scarsdale Union Free Sch. Dist.*, 913 F. Supp. 2d 26, 30 (S.D.N.Y. 2012); *A.M. ex rel. Y.N. v. New York City Dep't of Educ.*, 964 F. Supp. 2d 270, 277 (S.D.N.Y. 2013)). Therefore, the parties believe that the administrative record should

appropriately be filed under seal pursuant to *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006) (Countervailing factors weighing in favor of sealing include, *inter alia*, the privacy interests of those resisting disclosure).

Accordingly, the parties submit that the *Lugosch* standard is met as protecting the privacy interests of the minor student in keeping confidential that child's education and medical history constitutes a "compelling reason" to seal the record and outweighs the public's interest in access. *Lugosch*, 435 F.3d at 121. As such, the parties respectfully request leave to file the attached certified administrative record in this action under seal.

Thank you for your consideration of this request.

Respectfully submitted,

/s/

Philip Frank
Assistant Corporation Counsel

cc: Noelle Boostani, Esq. (by ECF)
Plaintiffs' counsel